IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/10/2003

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THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.24007 of 2001

The State Lorry Owners' Federation
Tamil Nadu, rep. by its President
P.Sengodan, 87 Salem Road, Namakkal ..... Petitioner

-Vs-

The Transport Commissioner
cum State Transport Authority
Chennai 5 ..... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, as stated there in.

For Petitioner : Mr.S.Radhagopalan

For Respondent : Mrs.Thenmozhi Sivaperumal
AGP (Writs)

:ORDER

Heard the learned counsel appearing for the parties.

2. This matter was directed to be listed for orders on 17.09.2003. When the matter is taken up today, the learned counsel appearing for the respondent submitted that further time may be allowed to file counter. Since the matter was admitted about two years back, it is obvious that the respondent had sufficient time to file counter. At any rate, the matter was adjourned to 17.09.2003 and thereafter, a month has lapsed in the mean time, I do not find any reason to give further time to file counter.

3. The writ petition has been filed on behalf of the State Lorry Owners Federation. The prayer in the writ petition is to the following effect:

"To issue a writ of mandamus, to direct the respondent to enforce the provisions of Section 114 of the Motor Vehicles Act, 1988 by offloading the excess weight of public carriers before resorting to collect the compounding fee for such violations of permit conditions under Section 86(5) of the Motor

Vehicles Act"

4. The aforesaid prayer is based on the statutory provision containing under Section 114 of the Motor Vehicles Act, which is extracted here under:

"114.Power to have vehicle weighed:--
(1)(Any Officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113), require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of Section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with Section 113 and on receipt of such notice, the driver shall comply with such directions.
(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit."

5. Since statutory provision has been made which is obviously with a view to ensure compliance with the provisions containing under Section 113 of the Act, there cannot be any possible reason not to take steps in accordance with Section 114 of the Motor Vehicles Act.

6. The learned counsel for the respondent submitted that there is no infrastructure available to implement the provisions contained in Section 114 of the Motor Vehicles Act. It is submitted that even if excess weight would be offloaded, there is no infrastructure to keep such excess load in safe custody. This submission is apparently contrary to the provisions contained in Section 114 of the Motor Vehicles Act.

7. A perusal of the aforesaid provision makes it clear that the driver is required "to offload excess weight at his own risk and not to remove the vehicle or trailer until the laden weight has been reduced." From the emphasized portion it is clear that the responsibility of the driver is first to offload the excess load and second, to keep such offloaded goods in safe custody. It is not the responsibility of the public Officer to keep such offloaded goods in safe custody.
8. The learned counsel for the respondent, however, pointed out that suitable action can be taken under Section 86 of the Motor Vehicles Act. There is no doubt that if there is a violation of Section 113 of the Motor Vehicles Act and the goods are carried in excess of the permitted weight, action under Section 89 of the Motor Vehicles Act can be taken for suspension of the license or for even cancellation of the permit. However, such suspension or cancellation can be done only by the transport authority which had granted the permit. Therefore, if permit is granted by any outside

authority, such suspension or cancellation of license can be effected only by the same authority. At any rate, taking action under Section 86 and taking action under Section 114 of the Motor Vehicles Act are not mutually contradictory. In fact, Section 114, require that the authority shall intimate about such fact to the authority which had issued the permit obviously for the purpose of taking further action as contemplated under Section 86 read with Section 89.

9. The leaned counsel for the respondent further pointed out that under Section 194 of the Motor Vehicles Act, penal action can be taken and therefore, there is jurisdiction to compound the alleged violation. Merely because a penal action can be taken under Section 194 and which can be compounded under Section 200 is not an excuse not to ensure compliance with Section 114. All the submissions made by the learned counsel for the respondent appears to be mere lame excuses not to follow the statutory provision for which, I do not find any justification.

10. In the result, the writ petition is allowed. No costs.

Index:Yes
Internet:Yes

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To
The Transport Commissioner
cum State Transport Authority
Chennai 5

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